

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

APR 24 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 03-_____
Table of Allotments)	RM-_____
FM Broadcast Stations)	
(McCook, Nebraska and Maxwell, Nebraska))	

To: Chief, Allocations Branch
 Policy and Rules Division
 Mass Media Bureau - Mail Stop 1800D5

PETITION FOR RULEMAKING

1. McCook Radio Group, LLC ("MRG"), licensee of KRKU(FM), McCook, Nebraska, by its attorney, hereby petitions the Commission to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, by reallocating Channel 253C1 from McCook, Nebraska, to Channel 253C1, Maxwell, Nebraska, and modifying KRKU's license accordingly. In addition, and to accommodate the minimum distance separation requirements necessary to effectuate the KRKU reallocation, MRG requests that the FCC substitute Channel 237C3 for Channel 252C3 at the current transmitter site of KBBN-FM, Broken Bow, Nebraska, and modify the KBBN-FM license to specify operation on the alternate channel accordingly.

PRELIMINARY STATEMENT

2. Under Section 1.401 of the Commission's Rules, any interested party may petition the Commission to amend its rules or regulations. 47 C.F.R. § 1.401(a). By filing this Petition, MRG is requesting the Commission amend its FM Table of Allotments with

No. of Copies rec'd 014
 List A B C D E
MB 03-58

respect to the communities of McCook, Maxwell and Broken Bow, Nebraska, as set forth in 47 C.F.R. § 73.202(b), as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Maxwell	---	253C1
McCook	230C2, 241C1, 253C1, 271C1 280C2, 287C1	230C2, 241C1, 271C1, 280C2, 287C1
Broken Bow	252C3	237C3

As shown below, because this proposal would result in a preferential new arrangement of allotments under the Commission's own guidelines, the public interest will be served by amending the FM Table of Allotments, as requested herein, and modifying the authorizations for KRKU and KBBN-FM.

II. ARGUMENT

A. MRG's Proposal Is Not Subject to Any Competing Expressions of Interest.

3. This Petition is being filed pursuant to Section 1.420(i) of the Commission's Rules, which allows the FCC to modify a station's license to specify a new community of license, without affording other interested parties an opportunity to file competing expressions of interest, where, as here, the proposed allotment is mutually exclusive with the station's present assignment. *See Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("*Modification Report and Order*"). As demonstrated by the Technical Statement attached hereto as *Exhibit A*, the requested reallocation of Channel 253C1, and the proposed modification of KRKU's license, are mutually exclusive with KRKU's currently authorized

operations. Accordingly, the FCC may act on this Petition without granting an opportunity to other parties to file competing expressions of interest.

B. MRG's Proposal Does Not Violate the FCC's Minimum Distance Separation Requirements

4. Under Section 73.207 of the Commission's Rules, the Commission may accept petitions to amend its FM Table Allotments so long as the reference points of the proposed community meet all of the minimum distance separation requirements. 47 C.F.R. § 73.207(a). As shown in the engineering exhibit attached hereto as *Exhibit A*, the reallocation of Channel 253C1 to Maxwell complies with all of the Commission's minimum distance separation requirements, except for KBBN-FM, Channel 252C3, Broken Bow, Nebraska. To that end, and pursuant to Commission precedent, MRG requests that Channel 237C3 be substituted for Channel 252C3 for KBBN-FM without changing the transmitter site, and that the FCC issue an order to show cause to Custer County Broadcasting Co., licensee of KBBN-FM. Such a channel substitution will provide KBBN-FM with a channel that is the equivalent, if not better, than the channel on which KBBN-FM is now operating. MRG affirms that it will reimburse Custer County Broadcasting Co., for reasonable expenses it incurs due to the proposed change in channel in accordance with Commission policy. Therefore, the Commission may promptly act on this Petition.

C. MRG's Proposal Serves the Public Interest Under the FCC's Prerequisites and FM Allotment Priorities

5. The Commission has set forth two prerequisites before it will approve a "city of license" FM allotment change request: (1) the former community shall not be deprived of its only existing local transmission service; and (2) the modification will result in a "preferential

arrangement of allotments” under current FM allotment priorities. *Modification Report and Order*, 4 FCC Rcd at 4874. The Commission’s FM allotment priorities are, in descending order of importance: (1) provision for first full-time aural reception service; (2) provision for second full-time aural reception service; (3) provision for first local transmission service; and (4) provision for other public interest factors. *See Modification Report and Order*, 4 FCC Rcd at 4873.

1. First Prerequisite: Reallotment of KRKU will not Deprive McCook of its Only Existing Aural Broadcast Service.

6. In addition to KRKU, the following stations are licensed to McCook: KBRL(AM), KNGN(AM), KICX-FM, KIOD(FM) and KSWN(FM), for a total of 3 wide area FM and 2 AM stations. KBRL(AM) and KICX-FM are also licensed to MRG. Therefore, this proposed allotment satisfies the first prerequisite as McCook would continue to have local aural broadcast services.

2. Second Prerequisite: The Relocation of KRKU to Maxwell Constitutes a Preferential Arrangement of Allotments Under Established Commission Priorities.

a. The First Two FM Allotment Priorities are not Material

7. McCook already receives at least 7 full-time AM and FM broadcast reception services, and Maxwell receives at least 7 time full-time aural broadcast reception services. Therefore, the first two allotment priorities set forth by the Commission are not material to a public interest determination in this proceeding as both communities already receive at a minimum more than 5 full-time aural broadcast reception services. *See Exhibit A. See, e.g., Winner and Wessington Springs, South Dakota*, 11 FCC Rcd 6663 (1996).

b. The Third Allotment Priority, First Local Transmission Service, is Decisionally Favorable in this Proceeding

8. The third of the Commission's allotment priorities is material as MRG's proposal to relocate KKKU would provide Maxwell with its first local aural transmission service, making this proposal decisionally favorable to a consideration of this Petition.

9. Maxwell exhibits a substantial number of the community indicia that the Commission has used in the past in determining whether a community deserves to have its own local service. *See, e.g., Arcadia and Fort Meade, Florida*, MM Docket No. 97-159 (released July 18, 1997). Maxwell is an incorporated village recognized by the United States Census, with a reported population of 285 people in 1990 and a 10.5 percent increase to 315 people in 2000. Maxwell has its own locally elected mayor and has its own fire department, water department, post office and public school system. There are two churches, and various businesses that are located in or just near Maxwell, including a body shop, hardware store, barber shop, insurance office, grocery store, and the Maranatha Campground and Bible camp, which hosts year round sports, youth and spiritual activities. Maxwell is also home to the Valley View Guest Ranch and the Fort McPherson National Cemetery, founded in 1863 and Nebraska's only National Cemetery. Approximately seven miles away is the Sioux Lookout, a famous observation point visited year round. A Fun Fair Festival and Parade is held annually in Maxwell September, and the community has plans to build a new youth center and undertake major improvements to the Town Hall.

10. Maxwell has its own unique identity and history. Established in the 1860s as a result of Ft. McPherson and later the Ft. McPherson Cemetery, it had a local store, grain elevator, and in 1876 was the site from which the telegraph was sent announcing Sitting Bull's victory at the Little Big Horn and the end of Custer.¹

11. The Commission has allotted FM channels to smaller communities as long as the community is either incorporated or listed in the U.S. Census.² Therefore, because Maxwell possesses the requisite "social, economic and cultural components that are commonly associated with community status," *see, e.g., Semora*, Maxwell is worthy of its own first local transmission service.

c. The Public Interest Will Be Served as the Relocation will Result in a Gain in Area and People Served by KRKU

12. *Exhibit A* shows that the proposed illustrative 60 dBu contour, with less than the maximum C1 facilities, will provide service to 47,699 people and a coverage of 9,163 square kilometers. The existing KRKU facilities provide service to 19,623 people over 7,126 square kilometers. The relocation will therefore result in a net gain of 28,076 people and 2,037 square kilometers. The Commission has consistently held that any loss area will not be considered underserved if that area continues to be served by five or more full-time aural services. *See, e.g., Canovanas, Puerto Rico*, MM Dckt. No. 91-259 (released July 2, 1997); *LaGrange and Rollingwood, Texas*, 10 FCC Rcd 3337 (1995). Any loss area will continue to

¹ *See, e.g.,* http://www.geocities.com/aolsen_2000/MaxwellFtMcPherson.htm.

² *See, e.g., Reydon, Oklahoma*, MM Dckt. 01-227 (released February 26, 2003) (allotting an FM channel to a community of only 175 people that was incorporated and had a mayor, post office and city hall); *see also, Semora, North Carolina*, 5 FCC Rcd 934 (1990) (finding a community of only 150 people that was neither incorporated nor listed in the U.S. Census qualified as a community for allotment purposes) ("*Semora*").

be amply served at the very least by the remaining stations authorized to McCook, Nebraska and the surrounding environs. Therefore, because there is an overall gain in the KRKU service area from this proposed reallocation, the relocation is clearly within the public interest.

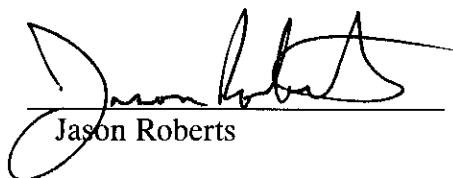
D. MRG's Declaration of Intent

13. If MRG's proposal set forth herein is adopted, MRG intends to file an FCC Form 301 specifying facilities for Channel 253C1 at Maxwell, Nebraska, and will promptly construct the facilities contemplated therein.

CONCLUSION

14. For the foregoing reasons, McCook Radio Group, LLC hereby respectfully requests that the Commission promptly initiate the Rule Making requested herein to reallocate Channel 253C1 from McCook, Nebraska to Channel 253C1, Maxwell, Nebraska, and to modify the license of KRKU(FM) accordingly.

Respectfully submitted,



Jason Roberts

Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, NW,
Suite 200
Washington, DC 20036-3101
Tel. 202-728-0400
Fax 202-728-0354

Counsel for McCook Radio Group, LLC

Dated: April 24, 2003

FM Study for: KRKU

FCC Database Date: 4/18/2003

41-04-44

Location: MAXWELL, NE

Channel Class: C1

100-31-28

[*] by HAAT indicates calculated as missing in database.

Call Status	City, State Proponent	Chan Cl. File Number	Freq HAAT	kW Longitude	Latitude Azimuth	Dist. Clear(km)	Required Site
----------------	--------------------------	-------------------------	--------------	-----------------	---------------------	--------------------	------------------

EXHIBIT #A1

>>>>>> Study For Channel 253 98.5 mHz <<<<<<<<

KRKU LIC	MCCOOK, NE Fac. No. 86863	253 C1 98.5 BLH-20000807AAB	55.0 110	40-10-19 100-41-05	101.6 245 187.7 -143.4	224 -122.4	SHORT SHORT
Use of 73.215 for short spacing requires:							
ALLOC VAC	BROKEN BOW, NE 4/5/01: per one step coordinates	252 C3 98.3		41-23-49 100-31-28	83.8 144 64.8 -60.2		SHORT
KBBNFM LIC	BROKEN BOW, NE Fac. No. 14769	252 C3 98.3 BLH-20021223AAD	25.0 95	41-23-49 100-31-28	83.9 144 64.8 -60.1	133 -49.1	SHORT SHORT
Use of 73.215 for short spacing requires:							
KBBNFM APP	BROKEN BOW, NE Fac. No. 14769	252 C3 98.3 BPH-20010108AAT	25.0 95	41-23-49 100-31-28	83.9 144 64.8 -60.1	133 -49.1	SHORT SHORT
KATRFM LIC	OTIS, CO Fac. No. 48397	252 C1 98.3 BLH-19991115AAT	100. 169	40-25-13 102-58-10	219.1 177 251.3 42.1		CLEAR
KSIDFM LIC	SIDNEY, NE Fac. No. 35603	254 C1 98.7 BLH-19830218AF	62.0 113	41-11-03 103-11-37	224.4 177 273.9 47.4		CLEAR
ALLOC VAC	HYANNIS, NE RM-10510	250 C1 97.9		42-00-02 101-45-41	145.3 82 315.2 63.3		CLEAR
KKPRFM LIC	KEARNEY, NE Fac. No. 52804	255 C1 98.9 BLH-19870106KA	100. 191	40-48-53 100-31-28	150.6 82 100.7 68.6		CLEAR

04-22-2003

Larry Waggoner
EXHIBIT #A2

PAGE 1

FM Study for: KBBN

FCC Database Date 4/18/2003

41-23-49

Location: BROKEN BOW, NE

Channel Class: C3

99-37-02

[*] by HAAT indicates calculated as missing in database.

Call Status	City, State Proponent	Chan Cl. File Number	Freq kHz	HAAT	Latitude Longitude	Dist. Azim	Required Clear(km)	Site
----------------	--------------------------	-------------------------	-------------	------	-----------------------	---------------	-----------------------	------

>>>>>>> Study For Channel 237 95 3 mHz <<<<<<<<<

KKANFM LIC	PHILLIPSBURG, KS Fac. No. 3982	237 A BLH-19840612CK	95.3 45	3 00	39-47-32 99-37-02	179 8 142 172.2 37.8		CLEAR
KJLTFM LIC	NORTH PLATTE, NE Fac No 67761	235 C1 BMLED-19960327KE	94.9 230	100	40-59-49 100-52-47	114.8 76 247.7 38 8		CLEAR
	Commercial channel operating educational							
KROA LIC	GRAND ISLAND, NE Fac No 24712	239 C1 BMLED-19971209KC	95 7 140	100.	40-47-11 99-37-02	125.1 76 122.4 49 1		CLEAR
	Non-commercial educational station operating on a commercial channel							
ALLOC VAC	ECKLEY, CO Fac. No. 95614	237 C1 Docket-1997-109	95 3		40-06-48 102-29-18	281 3 211 240.5 70.3		CLEAR
	A Filing Window for this Channel will be Addressed by the Commission in a Subseq							



EXHIBIT #A5

04-23-2003

Larry Waggoner

FCC Database Date: 4/18/2003

PAGE 1

#	CALL STATUS	LOCATION STATE	CHANNEL CLASS	POWER	LATITUDE LONGITUDE	DISTANCE BEARING	KRKU
	KRKU LIC	MCCOOK NE BLH-000807AAB	253 Class C1	55.0 kW	40-10-19 100-41-05	Source Station	
1	KLNEFM LIC	LEXINGTON NE BLED-900515KC	204 Class C1	92.0 kW	40-23-05 99-27-30	107 km 77 dg	55 km 71 km +19 km
2	KPNEFM LIC	NORTH PLATTE NE BLED-910711KA	219 Class C1	81.0 kW	41-01-21 101-09-13	102 km 337 dg	47 km 66 km +19 km
3	KRVNFM LIC	LEXINGTON NE BLH-840123AN	226 Class C1	100.0 kW	40-41-50 99-47-17	96 km 52 dg	52 km 45 km +4 km
4	KSWN LIC	MCCOOK NE BLH-981013KG	230 Class C2	50.0 kW	40-11-27 100-48-29	11 km 281 dg	44 km 45 km WITHIN
5	KJLTFM LIC	NORTH PLATTE NEBMLED-960327KE	235 Class C1	100.0 kW	40-59-49 100-52-47	93 km 350 dg	49 km 66 km +28 km
6	KICXFM LIC	MCCOOK NE BLH-901130KC	241 Class A	3.1 kW	40-10-19 100-41-05	0 km 0 dg	48 km 13 km WITHIN
7	KWGB LIC	COLBY KS BLH-981216KD	250 Class C1	100.0 kW	39-23-24 101-33-35	115 km 221 dg	48 km 67 km +3 km
8	KRKU LIC	MCCOOK NE BLH-000807AAB	253 Class C1	55.0 kW	40-10-19 100-41-05	0 km 0 dg	48 km 67 km WITHIN
9	KOGAFM LIC	OGALLALA NE BLH-880809LC	259 Class C1	100.0 kW	41-03-50 101-20-16	113 km 331 dg	48 km 66 km +8 km
10	KQLS LIC	COLBY KS BLH-5236	262 Class C1	100.0 kW	39-28-50 100-54-34	79 km 194 dg	44 km 64 km +32 km
11	KFNF LIC	OBERLIN KS BLH-7474	266 Class C1	100.0 kW	39-49-33 100-39-09	39 km 176 dg	43 km 64 km WITHIN
12	KKCI LIC	GOODLAND KS BLH-000425AAL	273 Class C1	100.0 kW	39-23-24 101-33-35	115 km 221 dg	48 km 67 km +3 km
13	KXNP LIC	NORTH PLATTE NE BLH-820701AQ	278 Class C1	100.0 kW	41-12-49 100-43-48	116 km 358 dg	48 km 62 km +2 km
14	KAMIFM LIC	COZAD NE BLH-830815AD	283 Class C1	100.0 kW	40-46-35 100-01-47	87 km 39 dg	50 km 47 km +15 km
15	KIOD LIC	MCCOOK NE BLH-951109KF	287 Class C1	100.0 kW	40-11-27 100-48-29	11 km 281 dg	44 km 47 km WITHIN

EXHIBIT #A5

FCC Database Date: 4/18/2003

PAGE 2

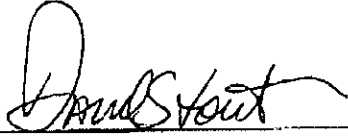
# CALL STATUS	LOCATION STATE	CHANNEL CLASS	POWER	LATITUDE LONGITUDE	DISTANCE BEARING	KRKU 1 mV/m
16 KLOE LIC	GOODLAND KS BL-	730 Class D	1.0 kW ND	39-20-04 101-45-28	131 km 225 dg	48 km 107 km +23 km
17 KXXX LIC	COLBY KS BL-831005AD	790 Class D	5.0 kW ND	39-23-35 101-00-06	91 km 198 dg	45 km 202 km +159 km
18 KRVN LIC	LEXINGTON NE BL-13198	880 Class B	50.0 kW ND	40-31-03 99-23-20	117 km 70 dg	55 km 287 km +218 km
19 KJLT LIC	NORTH PLATTE NE BL-970611AE	970 Class D	5.0 kW ND	41-09-36 100-52-43	111 km 352 dg	48 km 159 km +96 km
20 KODY LIC	NORTH PLATTE NE BL-790727AB	1240 Class C	1.0 kW ND	41-09-14 100-46-23	109 km 356 dg	48 km 93 km +31 km
21 KBRL LIC	MCCOOK NE BL-	1300 Class D	5.0 kW DA	40-11-31 100-39-06	4 km 52 dg	52 km 93 km WITHIN
22 KNGN LIC	MCCOOK NE BL-	1360 Class D	1.0 kW ND	40-11-45 100-41-57	3 km 335 dg	47 km 93 km WITHIN
23 KOOQ LIC	NORTH PLATTE NE BL-	1410 Class B	5.0 kW ND	41-10-30 100-45-07	112 km 357 dg	48 km 118 km +54 km
24 KKPR LIC	KEARNEY NE BL-	1460 Class D	5.0 kW ND	40-42-45 99-10-15	142 km 64 dg	53 km 110 km +16 km
25 KQNK LIC	NORTON KS BL-	1530 Class D	1.0 kW ND	39-49-37 99-52-08	80 km 119 dg	48 km 73 km +41 km
26 KAMI LIC	COZAD NE BL-	1580 Class D	1.0 kW ND	40-50-18 99-56-20	97 km 40 dg	50 km 74 km +25 km

DECLARATION OF DAVID STOUT

I, David M. Stout, Managing Member and President of McCook Radio Group, LLC, do hereby declare under penalty of perjury the following:

1. In connection with this Petition for Rulemaking, I visited the community of Maxwell, Nebraska, on April 17, 2003, after which I spoke with members of the community. I discovered Maxwell has its own locally elected mayor and its own fire department, water department, post office and public school system. There are two churches, and various businesses that are located in or just near the Maxwell community. A Fun Fair Festival and Parade is held annually in September, and the community has plans to build a new youth center and undertake major improvements to the Town Hall.

2. I have reviewed the Petition for Rulemaking attached hereto, and the facts stated therein are true and correct to the best of my knowledge, information and belief.


By: David M. Stout
Managing Member and
President

April 24 2003